

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DONALD J. SEIDEL, CPA
P.O. Box 4489
West Hills, California 91308

Certificate No. 8934,

Respondent.

Case No. AC-2001-22

OAH No. L2002010489

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on January 9, 2003.

Jonathan R. Davis, Deputy Attorney General, represented the complainant.

Respondent appeared in person and was represented by Marvin Zinman, Attorney at Law.

Oral and documentary evidence and evidence by way of stipulation and official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, concludes, and orders as follows:

FINDINGS OF FACT

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PARTIES AND JURISDICTION

Carol B. Sigmann, complainant herein, brought the Accusation in her official capacity as the Executive Officer of the Board of Accountancy, Department of Consumer Affairs.

On May 19, 1961, the Board of Accountancy issued Certified Public Accountant Number 8934 to Donald J. Seidel, CPA, respondent herein. The Certificate number was in full force and effect at all times relevant to the Findings herein.

These proceedings are brought under the provisions of *Government Code §§11500 through 11528*. All pre-hearing requirements have been met. Jurisdiction for this proceeding does exist.

FINDINGS RE ACCUSATION

On November 16, 1995, respondent was convicted on a plea of guilty, of one count of violating *Penal Code §787(a)* (grand theft of property) a felony, in the Superior Court of Los Angeles, West Los Angeles Judicial District, Case No. SA018955, entitled *People of the State of California v. Donald Seidel a.k.a. Donald Seidel*. The crime is a crime substantially related to the qualifications, functions and duties of a Certified Public Accountant and the crime constitutes unprofessional conduct.

The circumstances surrounding the conviction are that on a number of occasions during December 1988 to January 1994, respondent did willfully and unlawfully take money and personal property of a value exceeding four hundred dollars (\$400), to wit, money, the property of the National Football Foundation (NFF). Further, respondent in the commission of the above offense took, damaged and destroyed property of a value exceeding \$50,000.00.

More particularly, respondent while acting in the volunteer capacity of President of the NFF, and in a fiduciary capacity, embezzled monies in an amount exceeding \$100,000 by diverting NFF funds to his own personal use. As part of that diversion respondent issued checks from NFF accounts to his ex-wife; to himself and to others for redecorating his private residence.

Respondent's conduct set forth in Findings 4 and 5 constitutes dishonesty and fraud in the performance of bookkeeping operations.

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Respondent's conduct set forth in Findings 4 and 5 was willful and deliberate.

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Respondent's conduct set forth in Findings 4 and 5 constitutes fiscal dishonesty and the breach of fiduciary responsibility.

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Respondent's conduct set forth in Findings 4 and 5 constitutes embezzlement, theft and misappropriation of funds.

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Respondent's conduct set forth in Findings 4 and 5 demonstrates the present or potential unfitness of respondent to perform the functions authorized by a CPA certificate in a manner consistent with the public health, safety or welfare.

SUPPLEMENTAL FINDING

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As a result of the conviction respondent was, on February 12, 1996, sentenced to prison for sixteen months. He served the sentence. Thereafter, on October 25, 1996 he was placed on parole. No money fine or restitution were imposed upon him as a part of the Court's sentence or parole. He completed the parole without violation.

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As a result of the embezzlement, on November 17, 1994, the NFF filed a civil lawsuit against respondent: *Los Angeles Superior Court, the National Football Foundation and College Hall of Fame vs. Donald J. Seidel, case no. BC116565*. The case was not prosecuted until respondent's release from prison.

In February, 1997 respondent joined voluntarily with the NFF in a stipulation (agreement) that Judgment be taken against him, in effect, without contest. That Stipulation for Judgment, filed on February 10, 1997, provides for Judgment in the sum of \$135,000.00, reduced before entry of judgment to \$100,000.00 if respondent paid \$20,000.00 by March 12, 1997. Respondent was not able to pay the \$20,000.00 and to date has not satisfied the civil judgment and has not restored to the NFF the amount of money that he embezzled.

Respondent's conduct set forth in Finding 11 is but a start toward rehabilitation. Respondent's criminal conduct occurred over a period of years and involved a pattern and history of embezzlement while serving in a fiduciary capacity. By reason of respondent's criminal conduct the NFF suffered a loss in membership and a loss in the ability to donate funds to interscholastic football. Given the gravity of the offense insufficient time has passed to establish a record of clear and convincing rehabilitation necessary for continued licensure as a CPA.

SPECIAL RULING

- - - - - COSTS - - - - -

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(A) *Business and Professions Code §5107* provides, in part:

Payment to board of costs of investigation and prosecution of certain disciplinary cases.

- (a) The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found guilty of unprofessional conduct in violation of subdivisions (b), (c), (i), and (j) of §5100, or involving fiscal dishonesty in violation of subdivision (h) of §5100, to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorney's fees. The board shall not recover costs incurred at the administrative hearing.
- (b) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the executive officer, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.

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The declarations in support of said costs were read and considered along with opposition and objections thereto.

Complainant certifies investigation services from the Board's Investigative CPA in the amount of \$4,217.92. All work tasks to support 56 hours of investigation were not documented and much of the investigation work upon which the complainant relied was done by criminal prosecutors and investigators considering the time necessary to marshal evidence to a clear and convincing standard it is here determined that the sum of \$2,500 fairly and reasonably represents the cost of investigation for this matter.

Complainant certifies costs of prosecution in the amount of \$5,124.75. The State's prosecution relied in most part on documentary evidence arising from the criminal conviction and thus required limited time preparation to prosecute the case to a clear and convincing standard. Considering the time necessary for case preparation it is here determined that the reasonable cost of prosecution of this matter is the sum of \$3,500.00.

Said §5107 further provides:

The administrative law judge may make a further finding that the amount of reasonable costs awarded shall be reduced or eliminated upon a finding that respondent has demonstrated that he or she cannot pay all or a portion of the costs or that payment of the costs would cause an unreasonable financial hardship which cannot be remedied through a payment plan.

When an administrative law judge makes a finding that costs be waived or deduced, he or she shall set forth the factual basis for his or her finding in the proposed decision.

Respondent, at present, has an office in his residential townhouse and earns income doing tax work and accountancy for some clients and has been a consultant to a restaurant business. His income, including social security, approximates \$25,000 to \$30,000 annually.

Respondent is 77 years of age. He still works but his years of earning monies from employment is limited. He has, consistent with his age, health infirmities that do require care and treatment. Recently, he has undergone radiation for skin cancer. In or about 1996 he lost the sight of his right eye, an irreparable condition and has undergone aortic aneurysm repair surgery in late 1999. Reasonable inferences from the whole of the evidence establish that respondent's ability to earn income has been diminished because of his age and declining health.

By reason of the civil action he is in debt to NFF. He has no ability to borrow funds.

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At present respondent has not the resources to pay or “pay down” the costs for investigation and prosecution. Accordingly, by reason of paragraph 6 combined with reasonable inferences from the whole of the evidence it is here determined that respondent cannot pay all or a portion of the costs and that payment of costs would cause an unreasonable financial hardship which cannot be remedied through a payment plan.

CONCLUSIONS OF LAW

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The following sections of the *Business and Professions Code (BPC)* are pertinent herein:

(A) *BPC §5100* of the Code provides that after notice and hearing the Board may revoke, suspend or refuse to renew any permit or certificate granted under Article 4 (commencing with §5070) and Article 5 (commencing with §5080), or may censure the holder of that permit or certificate for unprofessional conduct which includes, but is not limited to, one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

- - -

(c) Dishonesty, fraud, or gross negligence in the practice of public accountancy or in the performance of the bookkeeping operations described in §5052.

- - -

(f) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

- - -

(h) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

- - -

(i) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

(B) *BPC §490* provides that the Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the profession for which the certificate was issued.

(C) *Title 16, California Code of Regulations, (CCR) §99* provides that a crime is considered by the Board to be substantially related to the qualifications, functions, or duties of a certified public accountant if to a substantial degree it evidences the present or potential unfitness of the certified public accountant to perform the functions authorized by the certificate in a manner consistent with the public health, safety or welfare, including but not limited to those involving fiscal dishonesty, or breach of fiduciary responsibility of any kind, or dishonesty, fraud, or gross negligence in the practice of public accountancy or in the performance of bookkeeping operations.

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Cause exists for discipline of respondent's certificate for violations as follows:

(A) *BPC §§490 and 5100(a)* by reason of Finding 4.

(B) *BPC §5100(c)* by reason of Finding 6.

(C) *BPC §5100(f)* by reason of Finding 7.

(D) *BPC §5100(h)* by reason of Finding 8.

(E) *BPC 5100(j)* by reason of Finding 9.

(F) *CCR §99* by reason of Finding 10.

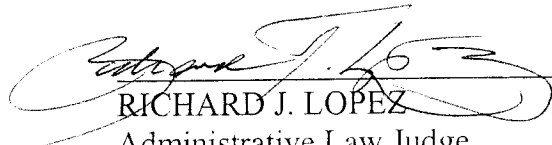
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The objective of an administrative proceeding relating to discipline, if any, is to protect the public; to determine whether a license holder has exercised his privilege in derogation of the public interest. Such proceedings are not for the primary purpose of punishment *Fahmy v. MBC* (1995) 38 Cal.App.4th 810, 817 (1778). In light of the foregoing and by reason of insufficient rehabilitation from a recent conviction, respondent does pose a risk to the public as a licensed CPA. Accordingly, the order which follow is consistent with the public interest.

ORDER

Certificate No. 8934, previously issued by the Board to Donald J. Seidel, is hereby revoked.

Dated: 3 February 2003


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

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P.O. Box 4489
West Hills, California 91308

Certificate No. 8934

Respondent

Case No. AC-2001-22

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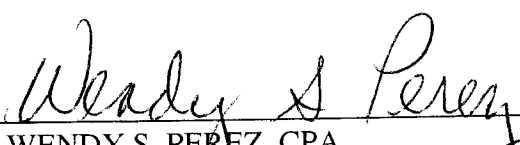
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the CALIFORNIA BOARD OF ACCOUNTANCY as its Decision in the above-entitled matter.

This Decision shall become effective on April 25, 2003.

IT IS SO ORDERED March 22, 2003.

CALIFORNIA BOARD OF ACCOUNTANCY


By WENDY S. PEREZ, CPA
PRESIDENT, CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

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6 Attorneys for Complainant

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8 **BEFORE THE**
BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2001-22

12 DONALD J. SEIDEL, CPA
P.O. Box 4489
13 West Hills, California 91308

A C C U S A T I O N

14 Certificate No. 8934

15 Respondent.
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18 Complainant alleges:

19 PARTIES

20 1. Carol B. Sigmann ("Complainant") brings this Accusation solely in
21 her official capacity as the Executive Officer of the Board of Accountancy, Department
22 of Consumer Affairs.

23 2. On or about May 19, 1961, the Board of Accountancy issued
24 Certified Public Accountant Number 8934 to Donald J. Seidel, CPA ("Respondent").
25 The Certificate number was in full force and effect at all times relevant to the charges
26 brought herein and will expire on September 30, 2001, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Accountancy ("Board"), under the authority of the following sections of the Business and Professions Code ("Code").

4. Section 5100 of the Code provides that after notice and hearing the Board may revoke, suspend or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct which includes, but is not limited to, one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

(c) Dishonesty, fraud, or gross negligence in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

(f) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

(h) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

(j) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

5. Section 490 of the Code provides that the Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the profession for which the certificate was issued.

6. Title 16, California Code of Regulations, section 99 provides that a crime is considered by the Board to be substantially related to the qualifications, functions, or duties of a certified public accountant if to a substantial degree it evidences the present or potential unfitness of the certified public accountant to perform

1 the functions authorized by the certificate in a manner consistent with the public health,
2 safety or welfare, including but not limited to those involving fiscal dishonesty, or breach
3 of fiduciary responsibility of any kind, or dishonesty, fraud, or gross negligence in the
4 practice of public accountancy or in the performance of bookkeeping operations.

5 7. Section 5107 of the Code provides, in part, that the Board may
6 request the administrative law judge, as part of the proposed decision in a disciplinary
7 proceedings, to direct any holder of a permit or certificate found in violation of section
8 5100 (a), (b), (c), (h), (i) or (j), to pay to the Board all reasonable costs of investigation
9 and prosecution of the case, including, but not limited to, attorney's fees.

10 CAUSE FOR DISCIPLINE

11 (Conviction)

12 8. Respondent is subject to disciplinary action pursuant to sections
13 5100(a), (c), (f) and (h) of the Code and section 490 of the Code in that Respondent
14 was convicted of a crime substantially related to the qualifications, functions or duties of
15 a Certified Public Accountant as follows:

16 a. On November 16, 1995, Respondent was convicted on a
17 plea of guilty, of one count of violating Penal Code section 487(a) (grand theft of
18 property) a felony, in the Superior Court of Los Angeles, West Los Angeles
19 Judicial District, Case No. SA018955, entitled People of the State of California v.
20 Donald Seidel a.k.a. Donald Seidal.

21 b. The circumstances surrounding the conviction are that on or
22 about December 1988 to January 1994, Respondent did willfully and unlawfully
23 take money and personal property of a value exceeding four hundred dollars
24 (\$400), to wit, money, the property of the National Football Foundation. Further,
25 Respondent in the commission of the above offense took, damaged and
26 destroyed property of a value exceeding \$50,000.00.

27 9. Respondent is subject to disciplinary action pursuant to section
28 5100(j) of the Code and in conjunction with Title 16, California Code of Regulations

1 section 99 in that Respondent embezzled approximately \$135,000.00 from the National
2 Football Foundation and College Hall of Fame as set forth above in paragraph 8.

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PRAYER

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WHEREFORE, Complainant requests that a hearing be held on the
matters herein alleged, and that following the hearing, the Board of Accountancy issue
a decision:

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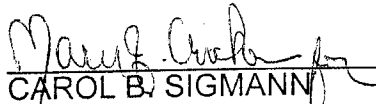
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1. Revoking, suspending or otherwise imposing discipline upon
Certified Public Accountant Certificate Number 8934 issued to Donald J. Seidel;
2. Awarding the Board costs as provided by statute; and
3. Taking such other and further action as the Board deems proper.

DATED: July 24, 2001.


CAROL B. SIGMANN
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California
Complainant